

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Conrad A. Rehn, Jr.,

Petitioner,

v.

Anoka County Adult Correctional Center,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-captioned matter came on for hearing before Administrative Law Judge Eric L. Lipman commencing at 9:30 a.m. on November 20, 2006 at the Office of Administrative Hearings, and the record closed on that date. The hearing was held pursuant to a Notice of Petition and Order for Hearing dated October 5, 2006.

Conrad A. Rehn, Jr., 1460 – 440th Street, Harris, Minnesota 55032, appeared on his own behalf and without counsel (“Petitioner”). Marcy Crain, Assistant Anoka County Attorney, 2100 Third Avenue, Anoka, Minnesota 55303, appeared on behalf of the Anoka County Adult Correctional Center (“Respondent” or “the County”).

STATEMENT OF ISSUE

Whether the Petitioner was entitled to a Veterans Preference hearing under Minn. Stat. § 197.46 prior to being removed from the roster of part-time Correctional Officers?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Petitioner is an honorably discharged veteran of the United States Army.¹ He was on active duty from February of 1975 through January of 1978.²

2. On or about September 11, 2001, Mr. Rehn began working for the County as a Correctional Officer on a "Part-Time, Temporary, Intermittent" basis.³

3. On or about April 20, 2002, Mr. Rehn took an assignment with the County as a Full-Time Work Release Officer.⁴ In this assignment, there was a six month probationary period before incumbent employees would succeed to the complete range of employment rights under the position.⁵

4. On or about June 19, 2002, and during the six-month probationary period as a Work Release Officer, Mr. Rehn submitted his resignation. As Mr. Rehn wrote to his Supervisor, Gary White:

I regret to have to write this, but because of my injury I have to resign my full time status, and would like to remain part-time if possible in the County.⁶

5. Following the receipt of Mr. Rehn's resignation letter, County personnel officials changed his employment status with the County from "Full Time Regular" to "Temporary Intermittent."⁷

6. Near the time of his resignation, Mr. Rehn inquired of his supervisor, Mr. White, as to whether Mr. White might be helpful in securing part-time work for Mr. Rehn. Specifically, Mr. Rehn asked Mr. White to contact the supervisor of the County's adult medium security facility, John Emmel, and to urge Mr. Emmel to include Rehn among the officers working part-time at that facility.⁸

7. After his June 19, 2002 resignation, until late May of 2003, Mr. Rehn worked part-time as a Correctional Officer for the County's adult medium security facility, in Lino Lakes, Minnesota ("Adult Correctional Center").⁹

¹ See Exs. 2, 4, 6 through 10; *accord*, Ex. B and Petition for Relief.

² See, Ex. B.

³ See, Exs. 2 and 3.

⁴ See, Ex. 4.

⁵ Testimony of L. Wagner; Ex. 6.

⁶ Ex. 5; *compare also*, Ex. 6.

⁷ Exs. 6 and 7.

⁸ Testimony of C. Rehn; *see also* Ex. D (Letter of Gary White).

⁹ Testimony of J. Emmel; Test. of C. Rehn.

8. Correctional Officers at the Adult Correctional Center signify their availability and willingness to work particular shifts by completing, in advance, Availability Forms for the coming month.¹⁰

9. In addition to their regular duties, Anoka County Correctional Officers are directed to participate in 20 hours of training sessions each year, so as to maintain compliance with a state-developed training standard for local correctional officers.¹¹

10. In the spring of 2003, Mr. Rehn's brother, Garry Rehn, served as a Correctional Officer for Anoka County. On or around April 9, 2003, Garry Rehn fell while descending a stairway and injured himself. Garry Rehn was then assisted to a nearby car by fellow officers – including his brother, Conrad, and John Emmel.¹²

11. Following Garry Rehn's injuries in April of 2003, Petitioner worked fewer hours as a Correctional Officer, so that he would be available to assist in the transport of his brother to various medical appointments.¹³

12. On May 5 and May 8 of 2003, the Petitioner, Mr. Rehn, was scheduled to work shifts at the Adult Correctional Center but did not report for work.¹⁴

13. In July, August and September of 2003, the Petitioner, Mr. Rehn, did not submit any Availability Forms signifying his willingness to work at the Adult Correctional Center.¹⁵

14. By way of a letter dated October 1, 2003, Correctional Center Administrator John Emmel wrote to Petitioner, and stated: "I have taken you off the part-time roster effective today You have not attended staff meetings/training as required."¹⁶

15. Beginning in late October of 2003, and continuing through the spring of 2004, Petitioner Mr. Rehn contacted Mr. Emmel on three occasions regarding his interest in returning to the roster of part-time correctional officers.

¹⁰ *Id.*

¹¹ Test. of J. Emmel.

¹² Testimony of G. Rehn; Test. of C. Rehn.

¹³ *Id.*

¹⁴ Test. of J. Emmel.

¹⁵ *Id.*

¹⁶ Ex. 11.

On each of those occasions, Mr. Emmel stated that he did not have a need for Mr. Rehn's services.¹⁷

16. More than three years after the dispatch of Mr. Emmel's letter removing Petitioner from the roster of part-time Correctional Officers, Mr. Rehn filed a Petition for Relief with the Commissioner of the Minnesota Department of Veterans Affairs.¹⁸ In his petition, Mr. Rehn complains that he neither received a formal termination of his employment or notice of his hearing rights under the Veterans Preference Act.¹⁹

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Pursuant to Minn. Stat. §§ 14.50 and 197.481, the Administrative Law Judge and the Commissioner of Veterans Affairs have the authority to determine if the Petitioner was removed from his employment without notice of his right to a hearing under the Veterans Preference Act.

2. Petitioner is an honorably discharged veteran for purposes of Minn. Stat. §§ 197.447 and 197.46.

3. When issuing the Notice of Petition and Order for Hearing, the Department complied with all substantive and procedural requirements of statute and rule.

4. The County received timely notice of the hearing and the claims asserted by Petitioner.

5. Under Minn. R 1400.7300, subp. 5, Petitioner has the burden of proof to establish that he was removed from his employment in violation of Minn. Stat. § 197.46.

6. Following the receipt of Mr. Rehn's June 19, 2002 resignation letter, County personnel officials changed his employment status from "Full Time Regular" to "Temporary Intermittent."²⁰

7. A temporary, intermittent assignment is not considered a "position by appointment or employment" under the Veterans Preference Act.

¹⁷ Test. of J. Emmel.

¹⁸ Petition for Relief (October 3, 2006).

¹⁹ *Id.*

²⁰ Exs. 6 and 7.

8. Temporary employees are excluded from the protections of the Veterans Preference Act – including a pre-discharge notice of hearing rights.

9. The County did not violate the Veterans Preference Act when it removed Mr. Rehn from the roster of employees that were eligible for intermittent work as a Correctional Officer.

10. The Memorandum that follows explains the reasons for these Conclusions, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Conclusions.

11. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED THAT:

The Commissioner of the Minnesota Department of Veterans Affairs DENY the Petition for Relief.

Dated: December 19, 2006

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Reported: Tape recorded (3 tapes).

NOTICE

This Report in this consolidated case is a recommendation, not a final decision. The Commissioner of Veterans Affairs will make a final decision after a review of the record.

The Commissioner may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner.

Parties should contact Clark Dyrud, Commissioner of Veterans Affairs, State Veterans Service Building, 20 West 12th Street, Room 206C, St. Paul, Minnesota 55155-2006, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final decision of that agency under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioners, or upon expiration of the deadline for doing so. The Commissioners must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the Commissioners are required to serve their final decisions upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

In this proceeding the Petitioner has alleged that the County violated Minn. Stat. § 197.46 by discharging him without informing him of his right to a hearing under the Veterans Preference Act. The statute states, in part:

No person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.

Minn. Stat. § 197.46.

At the center of this case is a misunderstanding: Mr. Rehn believes that when he resigned his regular full-time position as a Work Release Officer, and resumed work at the Adult Correctional Center, his new assignment was a regular, permanent part-time position. Yet, this was not the case. As the employment records in this case make clear, following Mr. Rehn's resignation from his position as a Work Release Officer, he was hired by the County as a temporary, intermittent employee.²¹

The distinction is an important one – as temporary employees are excluded from the protections of the Veterans Preference Act; including a pre-

²¹ Exs. 6 and 7.

discharge notice of hearing rights.²² A temporary, intermittent assignment is not considered a “position by appointment or employment” under the Act.²³

It bears mentioning as well that the nature of Mr. Rehn’s work schedule leaves no doubt that he was an intermittent employee; and not one with a regular, part-time position at the Adult Correctional Center. The undisputed record is that prior to the County’s termination of its relationship with Mr. Rehn, he had neither requested work assignments from, nor worked at the Adult Correctional Center, for a period of more than 3 months. Even if one were to ignore how Mr. Rehn’s position is described in the County’s personnel records, such an arrangement cannot fairly be described as a regular, part-time position.²⁴

For these reasons, the County did not violate the Veterans Preference Act when it removed Mr. Rehn from the roster of employees that were eligible for intermittent work as a Correctional Officer. The Petition for Relief should be DENIED.

E. L. L.

²² See, e.g., *Crnkovich v. Independent School District No. 701*, 142 N.W.2d 284, 287 (Minn. 1966); *Gleason v. Murray County*, OAH Docket No. 4-3100-12605-2 (2000) (<http://www.oah.state.mn.us/aljBase/310012605.RT1.htm>).

²³ See, generally, *Christopherson v. City of Albert Lea*, OAH Docket No. 12-3100-14431-2 (2001) (<http://www.oah.state.mn.us/aljBase/310014431.rt.smm.htm>).

²⁴ Compare, generally, *Crnkovich*, 142 N.W.2d at 287 (“The record of plaintiff’s work days also indicates the sporadic, intermittent and temporary nature of plaintiff’s employment”)